

Finding 1. Reporting of Debts and Obligations

Summary

Audit fieldwork indicated that RPOC failed to report debts and obligations for 12 vendors totaling \$60,296 on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, RPOC amended its reports to materially include these debts and obligations.

The Commission approved a finding that RPOC failed to disclose debts and obligations of \$60,296 in its reports.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to 12 vendors totaling \$60,296 that RPOC failed to report on Schedule D. Of these debts, \$48,636 was incurred during the audit period and \$11,660 was incurred prior to the audit period and remained outstanding as of the beginning of the audit period. It should be noted that RPOC did disclose debts owed to some of these vendors during the audit period. However, the debt amounts identified by the Audit staff above were not included in the debt amounts reported.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the reporting of debts and obligations with RPOC's treasurer and provided schedules detailing the transactions requiring disclosure. The treasurer had no comments on this matter.

The Interim Audit Report recommended that RPOC amend its disclosure reports to correctly include debts and obligations of \$60,296 on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC amended its reports to materially include these debts and obligations. In addition, RPOC stated that it has tightened procedures for reporting accounts payable. RPOC also added that staff and board members have been informed that all its obligations need to be reported to the treasurer at the time they are incurred.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that RPOC filed amended reports that materially disclosed its debts and obligations.

E. Committee Response to the Draft Final Audit Report

RPOC's response to the Draft Final Audit Report provided no additional comments relating to this matter.

F. Audit Hearing

RPOC did not address this finding during the Audit hearing.

Commission Conclusion

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that RPOC failed to disclose debts and obligations of \$60,296 in its reports.

The Commission approved the Audit staff's recommendation.

Finding 2. Use of Levin Fund Transfers

Summary

During audit fieldwork, a review of Levin fund activity determined that RPOC received \$74,132 from the CRP's Levin account for reimbursement of voter registration expenses. RPOC then transferred \$73,465 from its Levin account to its federal accounts, as reimbursement for voter registration expenses. In accordance with 11 CFR §300.31(a), Levin funds expended must be raised solely by the committee that expends them. In response to the Interim Audit Report recommendation, RPOC disclosed \$73,465 on Schedule D of its 2013 November monthly report as a debt to its Levin account. RPOC requested a hearing before the Commission to discuss this matter.

The Commission approved a finding that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP.

Legal Standard

A. Expending of Levin Funds. Levin funds expended or disbursed by any State, district or local committee must be raised solely by the committee that expends or disburses them. Consequently, funds from national party committees, other State, district and local committees and Federal candidates or officeholders, may not be accepted as Levin funds. 11 CFR

§§300.31(a) and 300.34(b). This includes any entity directly or indirectly established, financed, maintained or controlled by any national, State, district or local committee of a political party. 52 U.S.C. §30125(b)(2)(B)(iv).

B. Levin Fund Transfers. A State, district, or local committee of a political party must not use any Federal funds transferred to it from or otherwise accepted by it from any other State, district, or local committee as the Federal component of an expenditure or disbursement for Federal election activity under 11 CFR §300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure or disbursement allocated between federal funds and Levin funds under 11 CFR §§300.32 and 300.33. 11 CFR §300.34(a).

Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by any State, district, or local committee of a political party of the national committee of any political party. 11 CFR §300.34(b).

Facts and Analysis

A. Facts

During the audit period, RPOC made 23 transfers, totaling \$73,465, from its Levin account to its federal accounts and reported these transfers on Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity). All of the Levin funds expended by RPOC¹ (\$73,465) were received from the CRP's Levin account, which transferred \$74,132 to RPOC's Levin account.

While there is no prohibition on the CRP transferring Levin funds to local party committees under 11 CFR §102.6, there is a prohibition on local committees using funds transferred by a state party committee for either the federal or Levin shares of disbursements allocated between federal and Levin funds.² As such, RPOC did not meet the requirement that the Levin funds must be raised solely by the committee that expends or disburses the funds.

B. Interim Audit Report & Audit Division Recommendation

At the entrance and exit conferences, the Audit staff discussed this matter with RPOC's treasurer. The treasurer had no comments regarding this matter.

The Interim Audit Report recommended that RPOC demonstrate that it solely raised the expended Levin funds. Absent such demonstration, it was recommended that RPOC refund its Levin account \$73,465 from its federal account and provide evidence of this refund.

¹ RPOC had a beginning cash balance of \$10 in its Levin account that was not transferred from CRP.

² This matter was addressed in a Request for Commission Directive 69 Guidance involving the Democratic State Central Committee of California (LRA #819) dated April 22, 2011.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RPOC added the Levin fund transfers (\$73,465) to its Schedule D on the 2013 November monthly report, as a debt owed to its Levin account.³

However, RPOC contended that the Commission should not accept this finding. RPOC stated that it is a vendor to the CRP and its agent in conducting voter registration activities in Orange County. RPOC noted that it has operated under the CRP's "Operation Bounty" agreement by which RPOC is compensated by the CRP on the basis of valid Republican voter registrations it obtains and which the CRP verifies as valid voter registrations throughout each election cycle. RPOC stated that, for the 2010-2011⁴ election cycle, this included registrations obtained outside the Federal Election Activity (FEA), Type II⁵ period, as well as, registrations obtained during the FEA, Type II period. RPOC stated that it received consideration in the form of payment per valid registration to defray its cost in obtaining, processing, verifying and submitting the voter registrations to the CRP through the Operation Bounty program. RPOC contended that without the Operation Bounty reimbursement, it would be less likely and able to conduct effective voter registrations using the volunteer resources of Republican volunteer organizations, groups and activists. Further, RPOC stated that the Operation Bounty program is a bona fide party building program, which engages Republican volunteer groups and individual Republican activists in voter outreach, voter communication and spreading the Republican identification and brand in the community. It further added that if the CRP was not able to utilize the RPOC as its agent and vendor, the CRP would have to seek alternatives, such as commercial vendors, which do not offer the collateral party building benefits that the RPOC-CRP relationship promotes.

RPOC contested whether this finding should be approved by the Commission on both statutory and constitutional grounds. RPOC stated that it is not prohibited from using non-federal funds transferred by a State, local or district committee of a political party to reimburse its federal account for a portion of expenses for voter registration conducted outside the FEA, Type II period as set forth in Commission regulation 11 CFR §300.32(b)(1)(i). Also, a State, local or district committee of a political party is not prohibited from paying vendors other than another State, local or district committee of a political party using Levin funds for voter registration activity during the FEA, Type II period under 11 CFR §300.32(b)(1)(i).

In conclusion, RPOC stated that the Commission should allow it to accept and use Levin funds obtained in reimbursement through Operation Bounty as a matter of contract and agency law. Alternatively, RPOC also noted that the Commission should not enforce 2 U.S.C. §441i(b)(2)(iv)(I) because it feels such enforcement would violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. RPOC believed this would discriminate against a political party and its members for engaging in voter registration political

³ As of February 28, 2015, this amount remains outstanding on Schedule D and the reported cash-on-hand balance is \$7,634.

⁴ The audit period was 2009-2010.

⁵ The Audit staff believes RPOC is actually referring to FEA, Type I. These are voter registration activities conducted by a state or local political party committee within a period starting 120 days before the date of a scheduled federal election and ending on the date of the election. The FEA, Type I periods were 2/08/10 – 6/08/10 for the 2010 CA Primary election and 7/05/10 – 11/02/10 for the 2010 General election.

activity using Levin funds received in connection with its contract with the CRP. RPOC further added that such a decision would not apply to other vendors that contract to engage in voter registration activity payable with Levin funds.

RPOC stated that guidance provided by the Commission's Reports Analysis Division and the CRP Final Audit Report of the Commission both confirm payments to local committees for voter registration activities were within the statute and the regulations. The Audit staff does not dispute this fact. CRP transferred Levin funds to RPOC, which is not prohibited by the Act. However, RPOC used the transferred funds for Type I FEA - voter registration activities, which is not permitted under 11 CFR §300.31(a). This is the distinction between the activities performed by these two committees.

Based on the above, the Audit staff considered that RPOC improperly spent \$73,465 on Type I FEA - voter registration activities using Levin funds transferred from the CRP.

D. Draft Final Audit Report

The Draft Final Audit Report noted that RPOC improperly spent \$73,465 on voter registration activities using Levin funds transferred from the CRP.

E. Committee Response to the Draft Final Audit Report

RPOC responded to the Draft Final Audit Report by requesting a hearing on this matter. RPOC stated that:

1. There was no evidence of circumvention by any donor to RPOC of the \$10,000 Levin Fund limits.
2. RPOC provided Republican voter registration to the CRP for "fair consideration" pursuant to the Operation Bounty voter registration agreement and found it "anomalous" that a state party committee would be permitted to transfer Levin funds to a subordinate party committee with the subordinate party committee precluded from using the Levin funds for "Levin" purposes.
3. RPOC understood that the CRP had obtained informal authorization to make the payments in question to RPOC. RPOC believed the transfers were permissible, and, in response to requests for additional information from the Commission, RPOC responded with FEC Form 99 submissions and does not recall further response from the Commission.

F. Audit Hearing

During the Audit hearing, RPOC reiterated its position that it acted as an agent to the CRP by engaging in local voter registration activities through the Operation Bounty Program. RPOC stated that it did not perform the voter registration services as a mechanism to raise money for its other political activities or as an effort to circumvent an applicable contribution limit. Further, RPOC contended that the CRP was given FEC approval to make the transfers to local parties for voter registration services. With regard to its claim of a violation of the equal protection clause, RPOC stated that the Commission had responded appropriately in this context. In closing, RPOC stated that the final audit report should not contain Finding 4.

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
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